

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Gregory Taylor,	:	
	:	C.A. No. 05-10-0032
Plaintiff	:	
	:	
v.	:	
	:	
Dorethea A. Savage,	:	
	:	
Defendant.	:	
	:	
AND	:	
	:	
Gregory Taylor,	:	
	:	C.A. No. 05-09-0066AP
Plaintiff below/	:	
Appellee.	:	
	:	
v.	:	
	:	
Dorethea Savage,	:	
	:	
Defendant below/	:	
Appellant,	:	

Upon Defendant's Motions to Dismiss

Submitted: March 9, 2006

Decided: April 3, 2006

Defendant's Motions to dismiss are denied.

Gregory Taylor, 1584 John Clark Road, Dover, Delaware, 19904, Pro Se Plaintiff.

I. Barry Guerke, Esquire, Parkowski, Guerke & Swayze, P.A., 116 West Water Street, Dover, Delaware 19903, Attorney for Defendant.

Trader, J.

In these two civil actions the defendant has filed motions to dismiss on the grounds that, among other things, (1) the plaintiff failed to file a short and plain statement showing that he is entitled to relief; (2) his claim is barred by the Delaware Statute of Frauds, 6 Del. C. Sec. 2714(a); (3) the plaintiff seeks to impose a constructive trust or resulting trust on the proceeds of sale from real estate and those remedies lie within the exclusive jurisdiction of Chancery; and (4) the plaintiff's claim that was initially filed in this Court should be dismissed because he is impermissibly splitting his cause of action. The plaintiff has now amended his complaint to comply with the rules of court and that issue is no longer before me. As to the issue of subject matter jurisdiction, I hold that this Court has jurisdiction to hear this case on the basis of a contract implied in law. I further hold that the plaintiff did not impermissibly split his cause of action since he could not present his claim in its entirety in the prior forum of the Justice of the Peace Court. The issue of the Statute of Frauds will await the trial of this case on the merits.

The relevant facts are as follows: On June 20, 2005, the plaintiff filed a debt action in Justice of the Peace Court 16 against the defendant alleging that he had helped the defendant purchase a home including "down payment, closing, appraisal fees, and insurance on the home". He also claims he paid for the new furnishings in the home. He alleges that the house was purchased on May 5, 2004 and marked for sale on June 17, 2005. On September 6, 2005, judgment was entered by Justice of the Peace Court 16 in favor of the plaintiff and against the defendant for \$15,000.00, plus court costs.

On October 7, 2005, plaintiff filed a complaint in this Court against the defendant for half of the equity value for the sale of the house. It is alleged that the house was purchased for \$164,900.00 on May 5, 2004 and sold for \$242,900.00 in August or September 2005.

The defendant has filed motions to dismiss the plaintiff's claims on the grounds that this Court lacks subject matter jurisdiction. The defendant argues that the plaintiff's complaint could be "deemed an action seeking to impose some sort of trust, either resulting or constructive ... upon the proceeds of the sale of the defendant's property or seeking an accounting thereof, or otherwise seeking some sort of specific performance of an alleged oral agreement." I disagree.

Under 10 Del. C. Sec. 341, "[t]he Court of Chancery has jurisdiction to hear and determine all matters and causes in equity." 10 Del.C. Sec. 342 provides in pertinent part that "[t]he Court of Chancery shall not have jurisdiction to determine any matter wherein sufficient remedy may be had by common law." Whether or not equitable jurisdiction exists is to be determined by an examination of the allegations of the complaint viewed in light of what the plaintiff really seeks to gain by bringing his or her cause of action. *Hughes Tool Co. v. Fawcett Publications*, 297 A.2d 428 (Del.Ch. 1972), *rev'd on other grounds*, 315 A.2d 577 (Del. 1974).

An examination of the plaintiff's complaint shows that it was his intent to collect money allegedly due him from the sale of the house that he purchased with the defendant. His complaint on appeal from the Justice of the Peace Court attempts to recoup the money that he spent on purchasing and furnishing the house. The plaintiff is seeking money damages for either breach of contract or under a quasi contractual theory. Thus, the plaintiff has a claim for damages that can be fully remedied at law. *See Bird's Constr. v. Milton Equestrian Center*, 2001 WL 1528956 at *6 (Del. Ch. Nov. 16, 2001).

In the case before me, since the property has been sold, the plaintiff is not seeking specific performance of the sale of real estate. Additionally, the plaintiff is not seeking imposition of a constructive trust because a constructive trust arises when a defendant's fraudulent, unfair or unconscionable conduct causes him to be unjustly enriched at the

expense of another to whom he owes some duty. *Adams v. Jankouskas*, 452 A.2d 148 (Del. 1982). A constructive trust is most often a proprietary remedy relating to specific property or identifiable proceeds of specific property. *McMahon v. New Castle Associates*, 532 A.2d 601, 603 (Del. Ch. 1987). Since there is no allegation that there are identifiable proceeds, it cannot be concluded that the plaintiff has alleged the imposition of a constructive trust. Additionally, the plaintiff may not proceed in Chancery under the theory of resulting trust since he has an adequate legal remedy of seeking damages against the defendant under several legal theories. *Woodcock v. Neel*, 1990 Del. Ch. LEXIS 165 at *6 (Del. Ch. Sept. 26, 1990).

As the court in *Woodcock* stated:

It goes without saying that this Court will not accept jurisdiction over a matter, “if a realistic evaluation leads to the conclusion that an adequate legal remedy is available.” *McMahon* at 603. Such a “realistic evaluation” requires a cutting away of familiar chancery terms as well as assessment of the nature of the wrong and the remedy available.

Id. at *3.

In this case, a realistic evaluation of the plaintiff’s claim shows that he has an adequate remedy at law. Therefore, this Court has subject matter jurisdiction to hear his claims.

The defendant next contends that the plaintiff’s claims should be dismissed as barred by the doctrine of *res judicata* as well as the related rule against splitting causes of action. The defendant’s contention is incorrect. The doctrine of *res judicata* is inapplicable here because there is no final judgment on the merit. Additionally, plaintiff’s claim concerning the profits from the sale of the house did not arise until after he had filed his claim in Justice of the Peace Court 16. In *Maldonado v. Flynn*, 417 A.2d 378 (Del. Ch. 1980), Vice Chancellor Hartnett summarized the rule against claim splitting as follows:

The rule against claim splitting is an aspect of the doctrine of *res judicata* and is based on the belief that it is fairer to require a plaintiff to present in one action all of his theories of recovery relating to a transaction, and all of the evidence relating to those theories, than to permit him to prosecute overlapping or repetitive actions in different courts or at different times. Thus, where a plaintiff has had a “full, free and untrammelled opportunity to present his facts,” but has neglected to present some of them or has failed to assert claims which should in fairness have been asserted, he will ordinarily be precluded by the doctrine of *res judicata* from subsequently pressing his omitted claim in a subsequent action.

Id. at 382 (citation omitted).

Further language from *Maldonado* is instructive here:

The rule against claims splitting cannot, however, entirely deny the plaintiff an opportunity to present his facts and theory of recovery. Therefore, where it appears that plaintiff could not for jurisdictional reasons have presented his claim in its entirety in a prior adjudication, the rule against claim splitting will not be applied to bar this claim. The question whether plaintiff has impermissibly split his claim is therefore dependent on whether he is able to present it, in its entirety, in the proper forum; which must be determined from an examination of the jurisdiction of the prior forum.

Id. at 383 (citation omitted).

Applying the above legal concepts to the facts of this case, there was no final prior adjudication because the defendant has taken an appeal to this Court from the default judgment entered in the Justice of the Peace Court. Secondly, Taylor has not had a full, free and untrammelled opportunity to present the facts of this case because the sale of the property had not been accomplished until at or about the time the default judgment was entered. The rule against splitting a cause of action is not absolute and will be relaxed where there is an omission due to ignorance, mistake, or fraud or where equitable considerations otherwise require. 1 Am. Jur. 2d *Actions* Sec. 105 (2005). Accordingly, I hold that the plaintiff’s claim for profits from the sale of the real estate is not barred by the doctrine of *res judicata* or the related doctrine of splitting of a cause of action.

The defendant argues that the plaintiff's claim is barred under *Mells v. Billops*, 482 A.2d 759 (Del. Super. 1984). In *Mells*, the Court held that *res judicata* barred the plaintiff's personal injury action where the plaintiff's first action for property damage was brought in a forum which lacked subject matter jurisdiction over the second action. The court reasoned that the plaintiff "voluntarily chose a court of limited jurisdiction when he could have presented all his claims had he brought the original action in this Court." *Id.* at 761. *Mells* is distinguishable from the case before me because in this case the plaintiff's claim for profits from the sale of land was not ripe for consideration at the time he filed his claim in the Justice of the Peace Court.

In summary, the defendant's motions to dismiss on the grounds of subject matter jurisdiction and *res judicata* are denied. The issue of the Statute of Frauds will be considered at trial. Finally, over the defendant's objection I order both cases to be consolidated for trial.

IT IS SO ORDERED.

Merrill C. Trader
Judge